the estate on behalf of the plaintiffs wrote to the defendant informing him that his services were terminated and one month's pay in lieu of notice was offered to him. In the same letter the defendant was required to hand over the said bungalow and vacate the same on the 14th January, 1964.

Notwithstanding this letter the defendant continued to reside in the bungalow and so continued up to the date of the hearing of the motion.

On the 18th July, 1964, a specially indorsed writ was issued by the plaintiffs praying for judgment against the defendant for:—

(i) An Order that the defendant and all persons holding through or under him do quit and vacate the said bungalow then occupied by him forthwith or in the alternative;

(ii) For an injunction restraining the defendant and all persons holding through or under him from remaining in or upon the said bungalow;

(iii) For damages in respect of the unlawful occupation of the said bungalow by the defendant from the 14th January, 1964, up to the date when vacant possession of the said bungalow is given; and

(iv) Costs.

This motion which prays for an order that the defendant and all persons holding through or under him may be restrained until the trial of the action from remaining in or upon the said bungalow was served with the writ on the defendant on the 1st August, 1964. The defendant entered appearance on the 12th August, 1964.

The plaintiffs asked for the injunction in this motion on the ground that the continued occupation by the defendant of the said bungalow was causing irreparable inconvenience and damage to the plaintiffs in that the plaintiffs were not then and had since the 14th January, 1964, not been able to instal another employee in the bungalow and unless the defendant was ordered to vacate the bungalow this situation would continue until the rights of the parties were finally adjudicated upon. In addition it was alleged that the defendant was utilizing not only the said bungalow but also the furnishings and fittings therein belonging to the plaintiffs.

The plaintiffs alleged that the defendant had no defence whatsoever to the action.

The plaintiffs contended that where the occupation of premises by a person is as servant of the owner for the more effectual performance of his duties as such servant and that person is dismissed from his employment he has no right to continue in occupation of the premises and an injunction will be granted preventing him from so doing notwithstanding that he may have an action for damages for wrongful dismissal. The authority for this is quoted as *Janisse* v. *Livesey*.[1] The plaintiffs also quoted in support of their submissions the cases of *Collison* v. *Warren*,[2] *Canadian Pacific Railway* v. *Gaud & Others* [3] and *Thomson* v. *Park*.[4]

The defendant filed no affidavit in reply. It was argued on the defendant's behalf that the plaintiffs must show a strong *prima facie* case that the plaintiffs' legal rights were in question. It was argued that the affidavit did not show the terms of employment of the defendant, how the lawful process of termination of that employment was carried out, and even assuming that they could be terminated were the defendant's services in fact terminated. It was also contended on behalf of the defendant that no irreparable damage would be done if the injunction was not granted as there was no evidence given that some other employee had been given employment and as a result required the use of the bungalow.

There did not appear to me to be any merit in the defendant's arguments and in addition he had failed to file an affidavit offering any explanation in reply to the plaintiffs. In my opinion this was a proper case in which an injunction should be granted in the terms of the motion at this stage of the action and I so ordered subject to the plaintiffs giving an undertaking as to damages.

An application was made for a stay of execution which I refused because, as I have already said, in my opinion there was no merit in the defendant's submissions on the question of the occupation of the bungalow.

Injunction granted.

Solicitors: *Shearn, Delamore & Co.*; *Lim Cheng Ean & Co.*

TEY SIEW GOH v. TAY TIAN SOO

[O.C.J. (Gill J.) September 12, 1964]
[Muar — Civil Suit No. 47 of 1963]

Damages — Personal injuries — Skull and brain — Possible future effects — Hypothetical.

Negligence — Standard of care required of the driver of motor vehicle — Contributory negligence of child — Damages.

The plaintiff a girl of about 12 years sued by her next friend for damages in respect of personal injuries sustained by her in consequence of her having been knocked down by a motor lorry driven by the defendant. The plaintiff had alighted from a bus and was running across the road when she was knocked down by the lorry. She suffered multiple abrasions and contusions and a fracture of the skull, the permanent effect of which was that she had a limp on the left foot and a tendency for her to trip.

Held: (1) the standard of care required of the driver of a motor vehicle is a high one and on the evidence the defendant was negligent in that he was not keeping a proper look-out and did not sufficiently reduce the speed of his lorry on seeing a bus from which, on his own admission there might be some passengers alighting;

(2) the plaintiff was equally guilty of negligence as she did not look to either direction before she ran across the road. Although she was an infant she can be guilty of contributory negligence which was assessed at 50%;

(3) in the circumstances taking into account the normal pain and suffering which the plaintiff had undergone and loss of amenities, but not taking into account the possible future effects of the injuries because they appear to be purely hypothetical, general damages be assessed at $8,000, of which half would be payable to the plaintiff.

Cases referred to:—

(1) *Fardon* v. *Harcourt-Rivington* (1932) 48 T.L.R. 215.

(2) *Daly* v. *Liverpool Corporation* [1939] 2 All. E.R. 142.

(3) *London Passenger Transport Board* v. *Upson* [1949] 1 All E.R. 60.

CIVIL SUIT.

D. A. Devadason for the plaintiff.

Keith Sallar for the defendant.

Cur. Adv. Vult.

Gill J.: The plaintiff in this case is suing by her next friend Tey Kim Teng, who is her lawful father, for damages in respect of personal injuries sustained by her in consequence of her having been knocked down by motor lorry No. JA 4694 driven by the defendant.

The accident took place on 9th August, 1962 at the 15th mile Muar/Tangkak Road, Johore after the plaintiff had alighted from a bus and as she was crossing the road. The bus was going in the direction of Tangkak and had stopped on a straight stretch of road, after negotiating a right-hand bend, at a point between a wooden sundry goods shop on the left side of the road just after the bend and a path leading to some kampong houses on the left further down the road. The bus conductor warned the plaintiff, as she was alighting from the bus, to look out for vehicles before crossing the road. The bus then moved forward, and it had gone a short distance when the plaintiff began to cross the road.

The only eye-witness of the accident, apart from the plaintiff and the defendant, was Hasnah binti Sitam (P.W.5) who was walking home from the shop along the left edge of the road facing Tangkak. According to her, the plaintiff alighted from the bus and began to walk fast across the road after the bus had gone forward a short distance. At about that time she saw a lorry coming from the direction of Tangkak. It was travelling fast and it did not sound the horn. The plaintiff had crossed the road and her right foot had touched the grass verge on the other side of the road when she was hit by the front part of the lorry. The plaintiff was thrown towards the middle of the road under the lorry, and the lorry having passed over her travelled a distance of two telephone posts before it stopped. The lorry was driven by the defendant who was the only person in the lorry, there being no attendant on it. After the accident the girl was lying on the road near the grass verge and to the right of the road centre as one faces Tangkak. There was blood on the road in the vicinity of the place where she fell.

The evidence of the plaintiff (P.W.8) is that she alighted from the bus at the 15th mile, Muar/Tangkak Road. The bus conductor told her, as she was getting down, to look out for vehicles. Having got down, she stood on the road side, and then, after the bus had moved and on seeing that there was no vehicle coming from either side, walked across the road. She remembers crossing the road and putting one foot on the grass verge on the other side, but she does not know what happened afterwards. In cross-examination she said that when she reached the centre of the road she looked to the left and to the right again and could still see nothing coming from either direction for some considerable distance. She then said that her evidence in the lower court that she ran across the road and that as she was running she did not hear the sound of anything was correct. But she went on to say that it was not true that as she was running across the road and before she reached the other side she ran into a lorry.

The bus driver (P.W.3) and the bus conductor (P.W.4) are unable to say anything as to how the accident took place. The driver says that he cannot remember whether he saw a vehicle coming from the opposite direction after the bus had moved forward. He says, however, that on hearing people shouting from behind shortly after he had moved forward his bus, he stopped, got down from the bus and saw the plaintiff lying in the centre of the road about three telegraph posts away behind the bus. The conductor says that he did not pay any attention to see whether any vehicle was coming from the opposite direction after the bus had moved, nor did he hear the sounding of any motor vehicle horn. His bus stopped because some one from among the passengers shouted and he got down and saw the plaintiff lying on the road, more to the right side of the road as one faces Tangkak, about 150 feet behind the bus.

The evidence of the defendant is that on 9th August, 1962 at about 10.30 a.m. he drove lorry No. JA 4694 from Tangkak to go to Sirom to collect vegetables, with Tee Kim Loh as his lorry attendant. On reaching the vicinity of the milestone, Muar/Tangkak Road, when his speed

was about 30 miles per hour, he saw a bus coming from the opposite direction. The bus stopped and a child suddenly appeared from behind it after it had started moving again. He came opposite the bus, passed it and then came into collision with the child. He was taken by surprise when the child suddenly appeared and ran across the road into his path and hit the off side door of the cab of his lorry. He tried to avoid the child by swerving his lorry to the left but failed. His near side wheels got on to the grass verge and, because his lorry was nearing the brink of the drain, he swerved back to the right. He saw the child fall to the right-hand side of the centre of the road as one faces Tangkak. When his lorry came to a stop, he got down and ran away for fear of being assaulted. Subsequently he went to Tangkak Police Station from where he returned to the scene of the accident with a Police Corporal (P.W.6).

The evidence of the lorry attendant (D.W.3) does not help the case one way or the other, apart from showing that perhaps Hasnah binti Sitam (P.W.5) made a mistake when she said that there was no attendant on the lorry. His evidence, briefly, is that on reaching the 15th mile, Muar/Tangkak Road, he saw a bus coming from the opposite direction. The bus stopped and then started off again. As his lorry passed the bus he heard the sound of an impact, but he did not know where the impact had taken place. The lorry drove straight on, remaining on the road all the time, and then stopped, after which he got down and ran to the Police Station and the driver boarded a taxi. He next saw the driver at the police station from where he returned to the scene with him and a police corporal.

I have considered very carefully all the evidence in this case. I accept the evidence of Hasnah (P.W.5) to be a substantially true and honest account of what she saw. I do not accept the plaintiff's story that she looked on either side before crossing the road, because had she done so she could not have failed to notice the lorry. I also accept the defendant's story that the girl suddenly ran across the road and that he swerved his lorry to the left. This latter part of his story is corroborated by the evidence of police corporal Yusoff (P.W.6) who saw a tyre mark on the grass verge as shown in his sketch plan (Exhibit P.3). But I do not believe his story that he was driving at only 30 miles per hour.

On the evidence before me I am satisfied that the defendant was negligent in that he was not keeping a proper look-out and did not sufficiently reduce the speed of his lorry on seeing an oncoming bus from which on his own admission there might be passengers alighting. He says that he realized there was apparent danger and therefore slowed down, but he cannot explain why he did not slow down sufficiently so as to be able to stop the lorry at once in case some one started crossing the road. Judging from the distance which the lorry travelled after the impact before it came to a stop, I am satisfied that he was driving at more than 330 miles per hour.

There was of course no speed limit in the area, but it was defendant's duty to put himself in a position where he could stop his lorry in the event of an emergency. He had seen the bus stop and move forward. He should have anticipated that some one would alight from the bus and attempt to cross the road. I do not accept his story that he sounded the horn, in view of the evidence of the other witnesses who were at or near the scene of the accident. It is true that it was too late for him to apply the brakes and I appreciate that in the agony of the moment he took the best possible course to avoid the accident, but that does not completely absolve him from liability.

The standard of care required of the driver of a motor vehicle is very high, as has been stated again and again by the courts in England. In *Fardon* v. *Harcourt-Rivington* [1] Viscount Dunedin said at page 216:

> "If the possibility of the danger emerging is reasonably apparent, then to take no precautions is negligence; but if the possibility of danger emerging is only a mere possibility which would never occur to the mind of a reasonable man, then there is no negligence is not having taken extraordinary precautions".

In *Daly* v. *Liverpool Corporation* [2] Stable J. stated at page 144:

> "My view is that the sooner it is recognised as being the law that a person who drives a motor vehicle under modern conditions is in precisely the same position as, for instance, that of a surgeon or a person who undertakes to perform an extremely difficult task, involving extremely dangerous consequences for other persons, the better. The standard of care and skill which the law must demand from the driver of a motor car today is a very high one indeed. A motor car has become a lethal weapon".

In *London Passenger Transport Boad* v. *Upson* [3] Lord Uthwatt said at page 70:

> "A driver is not, of course, bound to anticipate folly in all its forms, but he is not, in my opinion, entitled to put out of consideration the teachings of experience as to the form these follies commonly take".

I have also come to the conclusion that the plaintiff was equally guilty of negligence, because I am satisfied, even from her own evidence, that she did not look in either direction before she ran across the road. As I have already said, she could not have failed to see the lorry coming from the direction of Tangkak if she had looked in that direction before running across the road. As she did not in her own interest take reasonable care of herself and contributed, by her want of care, to her own injury. I find her guilty of contributory negligence. Enche Devadason on

behalf of the plaintiff has attempted to argue that a child of tender years cannot be guilty of contributory negligence. I do not agree. The legal position in such cases is stated by *Charlesworth* on Negligence, 3rd Edition, at page 528 as follows:

> "When a child is negligent, in the sense that he could by the exercise of 'reasonable care' have prevented or avoided the damage in question, he cannot recover; but in considering what is 'reasonable care' the age of the child must be considered. Infancy as such is not a 'status conferring right' so that the test of what is contributory negligence is the same in the case of a child as of an adult modified only to the extent that the degree of care to be expected must be proportionate to the age of the child".

The plaintiff was about 12 years old at the time of the accident, so that she was by no means a child of very tender years. She was of an age at which a child would normally be expected to appreciate the danger of running across a road without looking. Having held the plaintiff equally responsible for the accident, I assess her contributory negligence at 50 per cent.

As regards injuries suffered by the plaintiff, she had multiple abrasions and contusions, two small lacerated punctures on the right side of the skull and total paralysis of the left side of the body including the arm and the leg. X-ray examination revealed a large 3½ inch depressed fracture of the skull on the right side. These injuries were found on her by Enche' Yeo Bok Choon (P.W.1), State Surgeon, Johore, attached to the General Hospital, Johore Bahru, when he examined her on 16th August, 1962. It was argued by Enche Keith Sellar on behalf of the defendant that there was no evidence as to what injuries were found on the plaintiff soon after the accident on 9th August, 1962. I do not find much substance in that argument, because the plaintiff was taken to Tangkak Hospital after she was injured and sent to Muar Hospital on the same day, after which she was later transferred to Johore Bahru Hospital for treatment by P.W.1 with a history of an accident on 9th August, 1962. Quite clearly she was sent to Johore Bahru Hospital because of the seriousness of the injury. She was discharged from Johore Bahru Hospital on 27th September, 1962 and next examined by P.W.1 on 14th May, 1963, by which time the scalp wound caused by the operation had healed well and so had the fracture of the skull. The movements of the right side of her body were normal and the movements of the left side of the body were nearly normal. There was some weakness of the muscles on the left foot, which in the opinion of the State Surgeon was the result of the injuries sustained on the skull and the brain. The permanent effect of the skull injury is that she has a limp in the left foot and there is a tendency for her to trip.

The future effect of the injury was summed up by the State Surgeon as follows. She will have a permanent physical deformity of the skull from the scar of the operation and the healing of the depressed fracture of the skull bones. There was a tearing of the brain covering and loss of about a teaspoonful of brain matter, which resulted in the weakness on the left side. This weakness can never be recovered from, but can be compensated for to some extent by the muscles of the leg. The healing of the brain and its covering will result in scar tissue formation, and this may have certain effects on the brain itself in coming years, though up to now she has shown no signs of such effects. Indeed, after the operation the plaintiff showed a remarkable recovery, the only residual effect of her injury, apart from the deformity of the head and the scars, being that she has a weak left leg. The deformity and the scars are not noticeable to a naked eye and they will not be noticable at all as long as she has long hair on the head although one would feel a slight depression on her head when running one's hand over the head. She still shows no improvement of her left leg and she has a limp which will be permanent. Because of her remarkable recovery, the chances of the scar tissue affecting her brain are less, and there is no way of saying anything definite about it.

Enche Balasegaram, State Surgeon, Negri Sembilan, who examined the plaintiff on 11th March, 1964, has given evidence on behalf of the defendant. He has set out the result of his examination in his report (Exhibit D.2). His evidence, far from derogating from the evidence of P.W.1, is that the plaintiff has also a weakness of the left upper limb, some of which may be due to the upper limb not having been used during the period that the plaintiff was under treatment. His other evidence may be summed up as follows. The only residual effect the plaintiff now suffers from is the weakness of the left leg which he assessed on 11th March, 1964 at 20% and he would expect that percentage to diminish as the years go by. One of the main complications one might expect as a result of the injury would be epilepsy, but the incidence of epilepsy developing from head injuries of this nature is about 2%. In 90% of the 2% of such cases epilepsy would develop within the first year of the injury, and in the remaining 10% it could develop in several years. In the result the chances of her developing epilepsy are very remote. The other effects of her head injury could be headache and the lowering of the level of intelligence or mental capacity.

Considering the injuries and their effects as stated by the two medical experts, and taking into account the normal pain and suffering which the plaintiff would have undergone and loss of amenities, I would assess general damages at $8,000. In making that assessment I am not

taking into account the possible future effects of the injuries, because they appear to me to be purely hypothetical. I am also not taking into account any hypothetical lowering of the plaintiff's intelligence or mental capacity by reason of her head injury. In this connection the State Surgeon, Johore, stated that he had no way of judging whether the plaintiff's intelligence had been lowered, because he had no knowledge of her intelligence quotient before the accident. The only evidence of the so-called lowering of intelligence that has been produced is that the plaintiff was in a Government school before the accident and that since the beginning of this year she has had to go into a private school because she failed her examination last year. None of her teachers was called to give evidence of her mental capacity both before and after the accident so as to enable the court to judge whether, and if so, to what extent, there has been a lowering of her mental capacity. The plaintiff has suffered no adverse cosmetic effects, but she will have a limp in her left leg for the rest of her life with its attendant handicaps, disabilities and disadvantages extending perhaps to her matrimonial prospects.

Having assessed the plaintiff's contributory negligence at 50%, I would allow her claim for general damages in the sum of $4,000. As regards special damages, I would allow $350 for transport expenses of the plaintiff's parents and other relatives to visit her in the hospitals, $250 for special food while she was undergoing treatment and $111 paid to a woman to look after her while she was under treatment, making a total of $711 and then halving it. There will be judgment therefore for plaintiff for $4,355.50 and costs. The amount of special damages when paid can be paid out to the plaintiff's next friend. The sum of $4,000 in respect of general damages when paid must be paid out to the Public Trustee to be held by him in trust for the plaintiff until she attains the age of twenty-one years.

Claim allowed.

Solicitors: *D. A. Devadason; Keith Sellar & Co.*

CHEW GEOK LIN v. PAU PING KWONG

[O.C.J. (Lee Hun Hoe J.C.) September 12, 1964]

[Sibu — Civil Suit No. CS/36 of 1964]

Landlord and tenant — Statutory tenancy — Rent lawfully due — Tender of rent — Estoppel — Rent Control Ordinance (Sarawak Cap. 86), s. 7, 15 and 19.

The plaintiff, the registered proprietor and landlord of premises at Sibu applied for an order for possession of part of the said premises occupied by the defendant. In earlier proceedings the defendant had been held to be a statutory tenant of the premises. The plaintiff demanded rent at $145 per month for the period 1.5.63 to 31.3.64. No payment was made and the plaintiff thereupon sent defendant a notice to quit.

Held: (1) the defendant as statutory tenant held the premises on the same terms as the original tenancy, that is at the rent of $145 a month;

(2) rent is lawfully due if no payment is made on the date of the notice to quit and if the defendant does not tender the rent, after demand has been made on or before the date of the notice to quit, the plaintiff is entitled to apply for an order for possession;

(3) in the circumstances of the case the court was justified in suspending the order for possession for as long as the defendant paid the monthly rent if and when it falls due and if he paid the sum due for arrears of rent and mesne profits.

Semble: Parties cannot defeat the provisions of the Rent Control Ordinance by estoppel and a tenant cannot be estopped from proving facts where those facts if proved enable him to claim protection.

Cases referred to:—

(1) *Overseas Chinese Banking Ltd.* v. *Eastern Auto Co. Ltd.* [1961] M.L.J. 302.

(2) *Welch* v. *Nagy* [1950] 1 K.B. 455.

(3) *Solle* v. *Butcher* [1950] 1 K.B. 672.

(4) *Regional Properties Ltd.* v. *Oxley* [1945] A.C. 347.

(5) *M. & J. S. Properties Ltd.* v. *White* [1959] 2 K.B. 25.

(6) *Lau Khiok Chu* v. *Lim Pek Huang* Kuching High Court Civil Appeal No. A/1/63.

(7) *Chong Fong Kwee* v. *Kong Gin Ham* [1959] M.L.J. 75.

(8) *Chop Lean Yak* v. *Ng Ah Hee* [1953] M.L.J. 6.

(9) *Penang Motors (1950) Ltd.* v. *Suah Motors* [1959] M.L.J. 133.

CIVIL SUIT.

C. T. Wong for the plaintiff.

George Seah Kim Seng for the defendant.

Cur. Adv. Vult.

Lee Hun Hoe J.C.: Plaintiff is the registered proprietor and landlord of the premises known as No. 15, Bank Road, Sibu. He prays for an order against defendant for possession of that part of the said premises occupied by defendant under paragraph (a) subsection (1) of section 15 of the Rent Control Ordinance (Cap. 86).

It will be useful to state briefly the history of this case. Originally plaintiff leased the said premises to Chop Nguong Sing. In 1954 on the latter surrendering the lease plaintiff leased the said premises to Ing Hing Leong. In 1958 Ing Hin Leong surrendered the lease and the said premises was leased to Kiing Sie Kuo. In March, 1963 this tenancy came to an end when Kiing Sie Kuo surrendered his lease. It would appear that defendant had been a sub-tenant of Chop Nguong Sing of part of the ground floor of the said premises paying a rent of $150.00 per month including the use of lighting and water. When Chop Nguong Sing's tenancy came to an